

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID MCFERRIN, et al.,

Plaintiffs,

vs.

OLD REPUBLIC TITLE, LTD.,

Defendant.

No. 3:08-cv-05309-BHS

**KELLEY DEFENDANTS' RESPONSE TO
DEFENDANT OLD REPUBLIC TITLE,
LTD.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
RECONVEYANCE FEE CLAIMS**

Note on Motion Calendar: May 8, 2009

Third-Party Defendants, Troy X. Kelley and Diane Duffrin Kelley ("Kelleys"), hereby submit this brief response to Defendant Old Republic Title, Ltd.'s Motion for Partial Summary Judgment on Reconveyance Fee Claims:

In short, the Kelleys do not oppose—and indeed support—the relief requested by Old Republic in its motion. The Court should grant partial summary judgment to Old Republic on Plaintiffs' breach of contract, breach of fiduciary duty, and breach of agency claims pertaining to the reconveyance fee.¹

¹ In supporting the relief sought by Old Republic, the Kelleys note that they do not necessarily concur in each and every statement made by Old Republic or contained in its supporting Declarations. Old Republic has asserted that the Kelleys are liable to Old Republic as third-party defendants, and the Kelleys have denied that liability, so there are clearly disputes between these parties; however, because the Kelleys support the relief requested in Old

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2 DATED this 4th day of May, 2009.

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4 By /s/ David C. Lundsgaard

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25 Republic's motion it is not necessary to address those disputes here. The Kelleys simply wish to make clear that by
26 supporting Old Republic's requested relief, they are not waiving their right to assert their own positions on the
underlying facts at an appropriate future time, and they expressly reserve the right to do so.

KELLEY DEFENDANTS' RESPONSE TO
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RECONVEYANCE FEE CLAIMS -- 2
No. 3:08-cv-05309-BHS

M40315-1197737

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2009, I electronically filed the Kelley Defendants' Response to Defendant Old Republic Title, Ltd.'s Motion for Partial Summary Judgment on Reconveyance Fee Claims with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: May 4, 2009

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KELLEY DEFENDANTS' RESPONSE TO
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